SUPREME COURT, U.S.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 1151

FABERT MOTORS, INC.,
Plaintiff-Petitioner,

v.

FORD MOTOR COMPANY, a Corporation,
Defendant-Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Court of Appeals of the Seventh Circuit.

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Argument:	
A. If the execution of a release automatically deprives the dealer of a remedy, he would be helpless in every situation of forced resignation	12
B. Forced resignations caused by economic compulsion are inhibited by the Dealer's Day in Court Act, as much as is a direct cancellation	13
C. Duress need not be violent or physical; it may be created by economic coercion	14
D. Where the manufacturer, Ford Motor Company, through patent, tradename registration, and otherwise, controlled a major automobile line (such as the Lincolns and Mercurys), its refusal to permit an established dealer to continue to purchase such automobiles unless he would also take on the Edsel makes the latter a "tied" product	17
E. A "conspiracy" is not necessary so long as the same result, of depriving multiple dealers of their franchises, is accomplished by a pattern of tying "contracts"	18
F. Public injury is not required where the plaintiff has suffered harm through such illegal act	20

G. A factual question is presented as to whether duress existed, and whether it was still effective at the time the release was executed 21

H. Under Illinois law (and the release would be an Illinois contract), the questions of whether a release was executed of the signer's own "volition" and whether the consideration was adequate are peculiarly for the jury 24

I. A summary judgment for the manufacturer was, accordingly, highly inappropriate in this case .. 25

Conclusion 26

Authorities Cited.

Decisions:

Allison Co. v. Village of Dolton, 24 Ill. 2d 233, 181 N. E. 2d 151 14

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Illinois Merchants Trust Co. v. Harvey, 335 Ill. 284, 167 N. E. 69 23

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Klors v. Broadway-Hale Stores, 359 U. S. 207..... 20

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Northern Pacific Ry. v. United States, 356 U. S. 1 16

Pittsburgh Steel Co. v. Hollingshead & Blei, 202 Ill. App. 177 23

Poller v. Columbia Broadcasting System, Inc., 368 U. S. 464 at 473 25
Radiant Burners, Inc. v. Peoples Gas, Light & Coke Co., 364 U. S. 656 20
Reede v. Treat, 62 Ill. App. 2d 120, 210 N. E. 2d 833 25
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Slade v. Slade, 310 Ill. App. 77, 33 N. E. 2d 951 ....14, 15
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United States v. Masonite Corp., 316 U. S. 265 19
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United States v. Yellow Cab Co., 332 U. S. 218 20
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Statutes and Other Materials:

77 *A. L. R.* 2d 434, 435, 446 22
17A *American Jurisprudence,* pp. 555-599 .....13, 21
Burns, Joseph W., *A Study of the Antitrust Laws,* 1958, Central Book Co. 12
Cong. & Ad. News (84th Congress, 2nd Session, 1956), pp. 4596-4603 .....Add. 3-5
U. S. C., Title 15, §§ 1, 14, 15, 1221, *et seq.* .....2, Add. 1-3

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the decision of the Court of Appeals of the Seventh Circuit, not yet reported, but which is contained in the Addendum to this Petition. References (Add. ...) will be made to such Addendum, because of the interpretations of statutory material appearing therein; references to (App. ...) are to the Appendix filed with the Court of Appeals and in this Court.